

RECORDING REQUESTED BY:

William F. Bottoms and Mary A. Bottoms,
Trustees, The Bottoms family 1989 Trust
61 Laurel Lane
El Sobrante, California 94803

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California
Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E. Chief



CONTRA COSTA Co Recorder Office

STEPHEN L. WEIR, Clerk-Recorder

DOC- 2000-0049237-00

Check Number

M, MAR 13, 2000 09:24:02

CER \$45.00 MIC \$1.00 MOD \$20.00

REC \$24.00 TCF \$19.00

Ttl Pd \$109.00

Nbr-0000831772

lrc/R9/1-20

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION

(Civil Code section 1471(c))

A Portion of Seacliff Marina Site**Cap Parcel****Contra Costa County****(APN: 560-320-013)**

This Covenant and Agreement ("Covenant") is made by and between The Bottoms Family 1989 Trust, William F. Bottoms and Mary A. Bottoms, Trustees, (the "Covenantors"), the current owner of property situated in Richmond, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the portion of the Property identified on Exhibit A hereto (the "Restricted Property") of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The

Covenantor and the Department, collectively referred to as the "Parties", hereby agree pursuant to Civil Code section 1471(c) and Health and Safety Code section 25355.5 that the use of the Restricted Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Restricted Property is approximately 190,586 square feet, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Restricted Property is within the Property, which is in the area now generally bounded by the Harbor Channel on the south, the Port of Richmond Shipyard No. 3 on the east, the Point Potrero Hill on the north and the Brickyard Cove development on the west in the County of Contra Costa, State of California. The Restricted Property is also more specifically described as encompassing a portion of Contra Costa County Assessor's Parcel No.: 560-320-013.

1.02. The Restricted Property is a portion of the Seacliff Marina site (Site). The Site was used for shipbuilding, ship repair, ship scrapping, and metal recycling. Past activities have contaminated soils at the Site. Contaminants detected in the soil included asbestos, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, total petroleum hydrocarbons and heavy metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, vanadium and zinc). These contaminants are above the health based cleanup levels established for the Site.

1.03. Covenantor remediated the Site under the supervision and authority of the Department. The Site was remediated pursuant to a Remedial Action Plan prepared and approved pursuant to Chapter 6.8 of Division 20 of the Health and Safety Code. The Department circulated the Remedial Action Plan (RAP), which contains a summary of the Final Documentation of Recommended Remedial Cleanup Goals for Soils and Sediments Report, together with a negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Remedial Action Plan and the negative declaration were approved by the Department on February 15, 1995. Pursuant to the RAP, contaminated soils above the cleanup levels at the Site were excavated and then consolidated and capped on the Restricted Property. The Cap consists of 4 inches of asphalt and 2 feet of fill materials. The purposes of the asphalt cap are to contain the contaminants and to prevent the contaminants from migrating from the Site. The RAP requires operation and maintenance of the Cap and monitoring of groundwater to confirm that contaminants are not migrating from the Restricted Property. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including asbestos, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, total petroleum hydrocarbons and heavy metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, vanadium and zinc) remain in the soil on the Restricted Property, the Remedial Action Plan provides that a deed restriction that restricts the use of the Restricted Property is required as part of the remediation at the Site.

1.04. As detailed in the Remedial Action Plan as approved by the Department on February 15, 1995, soils at the Restricted Property contain hazardous substances, as defined in

H&SC section 25316, which include the following contaminants of concern at concentrations set forth below: asbestos (5%), polychlorinated biphenyls (55 parts per million (ppm)), polycyclic aromatic hydrocarbons (35 ppm), total hydrocarbons (1,600 ppm), antimony (260 ppm), arsenic (45 ppm), barium (270 ppm), beryllium (0.6 ppm), cadmium (75 ppm), chromium (230 ppm), cobalt (14 ppm), copper (2,600 ppm), lead (5,500 ppm), mercury (140 ppm), molybdenum (10 ppm), nickel (390 ppm), vanadium (98 ppm) and zinc (58,000 ppm). Based on the final Documentation of Recommended Remedial Cleanup Goals for Soils and Sediments Report, the Department concluded that the Restricted Property, as remediated, subject to the restrictions of this Covenant does not present an unacceptable threat to human safety or the environment. The Department also concluded that the Restricted Property does not present any risk that would require any other property, including the balance of the Property, to be restricted in its use and nothing in this Covenant limits the use of any property adjacent to the Restricted Property.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Restricted Property.

2.03. Occupant "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Restricted Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant acts forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Restricted Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Restricted Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Restricted Property unless expressly stated as applicable only to a specific portion thereof. In the event that Covenantor or its successor shall create a separate, lawful parcel consisting of all of the Restricted Property and no other portion of the Property (the "Separate Restricted Parcel"), then the use restrictions in this Deed Restriction applicable to the Restricted Property shall apply only to the Separate Restricted Parcel, and upon Covenantor's or its successor's written request and submission of appropriate documentation showing to the Department's reasonable satisfaction that the Separate Restricted Parcel contains all of the Restricted Property, the Department shall promptly reconvey this Deed Restriction for the balance of the Property by promptly executing such documents as may be reasonably necessary to reconvey this Deed Restriction for the balance of the Property and to remove the balance of the Property from being subject hereto. In

the event that Covenantor or its successor shall create one or more separate, lawful parcels that consist of any portion of the Property that does not include any portion of the Restricted Property (an "Unrestricted Property Parcel"), then this Deed Restriction shall not apply to the Unrestricted Property Parcels, and upon Covenantor's or its successor's request and submission of appropriate documentation showing to the Department's reasonable satisfaction that the Unrestricted Property Parcel does not contain any of the Restricted Property, the Department shall promptly reconvey this Deed Restriction for all Unrestricted Property Parcels by executing such documents as may be reasonably necessary to reconvey this Deed Restriction for all Unrestricted Property Parcels and to remove all Unrestricted Property Parcels from being subject hereto.

3.02. Binding upon Owners/Occupants: Pursuant to H&SC section 25355.5, this Covenant binds all owners of the Property prior to any reconveyance pursuant to Section 3.01, and after any reconveyance(s) pursuant to Section 3.01, all owners of the Separate Restricted Parcel and any portion of the Property that remains subject to this Deed Restriction, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property and/or the Separate Restricted Parcel, as appropriate, are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Restricted Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Restricted Property.

049237

3.04. Incorporation into Deeds and Leases: The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases and subleases for any portion of the Restricted Property.

3.05. Conveyance of Restricted Property: The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Restricted Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses: The Restricted Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Restricted

Property without a Soil Management Plan and Health and Safety Plan approved by the Department.

- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Restricted Property.

4.03. Prohibited Activities: The following activities shall not be conducted at the Restricted Property:

- (a) Raising of food (cattle, food crops).
- (b) Drilling for drinking water, oil, or gas without prior written approval by the Department.

4.04. Non-Interference with Cap and Monitoring Wells. Covenantor agrees:

- (a) Activities that may disturb the Cap and/or monitoring wells (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Restricted Property without prior review and approval by the Department.
- (b) All uses and development of the Restricted Property shall preserve the integrity and physical accessibility of the Cap and monitoring wells.
- (c) The Cap shall not be altered without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and/or monitoring wells and

(ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Permitted Uses. The Restricted Property may be used for any purpose that does not conflict with the prohibitions on use applicable to the Restricted Property set forth in this Covenant including any commercial use that does not conflict with the prohibitions on use applicable to the Restricted Property set forth in this Covenant and parking.

4.06. Access for Department. The Department shall have reasonable right of entry and access to the Restricted Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.07. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Restricted Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

049237

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Restricted Property in violation of the Restrictions. This Covenant shall be enforceable by the Department pursuant to Health & Safety Code Division 20, Chapter 6.5, Article 8, (commencing with section 25180).

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property or the Restricted Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

049237

7.01. No Dedication Intended Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Restricted Property, the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any notice ("Notice") as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or 2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: The Bottoms Family 1989 Trust
 William F. Bottoms and Mary A. Bottoms, Trustees
 61 Laurel Lane
 El Sobrante, California 94803

To DTSC: Department of Toxic Substances Control
Northern California - Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E. Chief

049237

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

049237

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: THE BOTTOMS FAMILY 1989 TRUST

By: W F Bottoms
William F. Bottoms, Trustee

Date: 2-17-80

By: Mary A. Bottoms, Trustee
Mary A. Bottoms, Trustee

Date: 2-17-80

Department of Toxic Substances Control

By: Barbara J. Cook
Barbara J. Cook, P.E. Chief,
Northern California - Coastal Cleanup Operations Branch

Date: 7-23-2000

STATE OF Nevada
~~CALIFORNIA~~

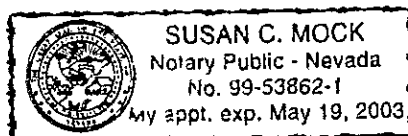
COUNTY OF Clark

On this 17 day of February, in the year 2000,

before me William F. & Mary A. Bottoms, personally appeared
Bottoms

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Susan C. Mock

049237

STATE OF Nevada
~~CALIFORNIA~~)
COUNTY OF Clark)

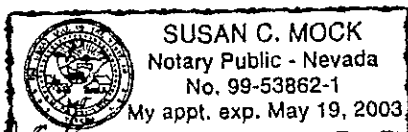
On this 17 day of February, in the year 2000,
before me William F. & Mary A. Bottoms personally appeared
Bottoms

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Susan C. Mock



049237

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On this 23rd day of February, in the year 2000,

before me FRANK PISCITELLI, personally appeared

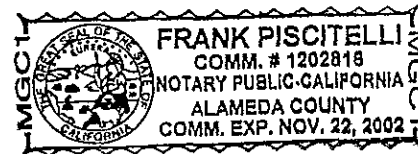
BARBARA JEAN COOK

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature

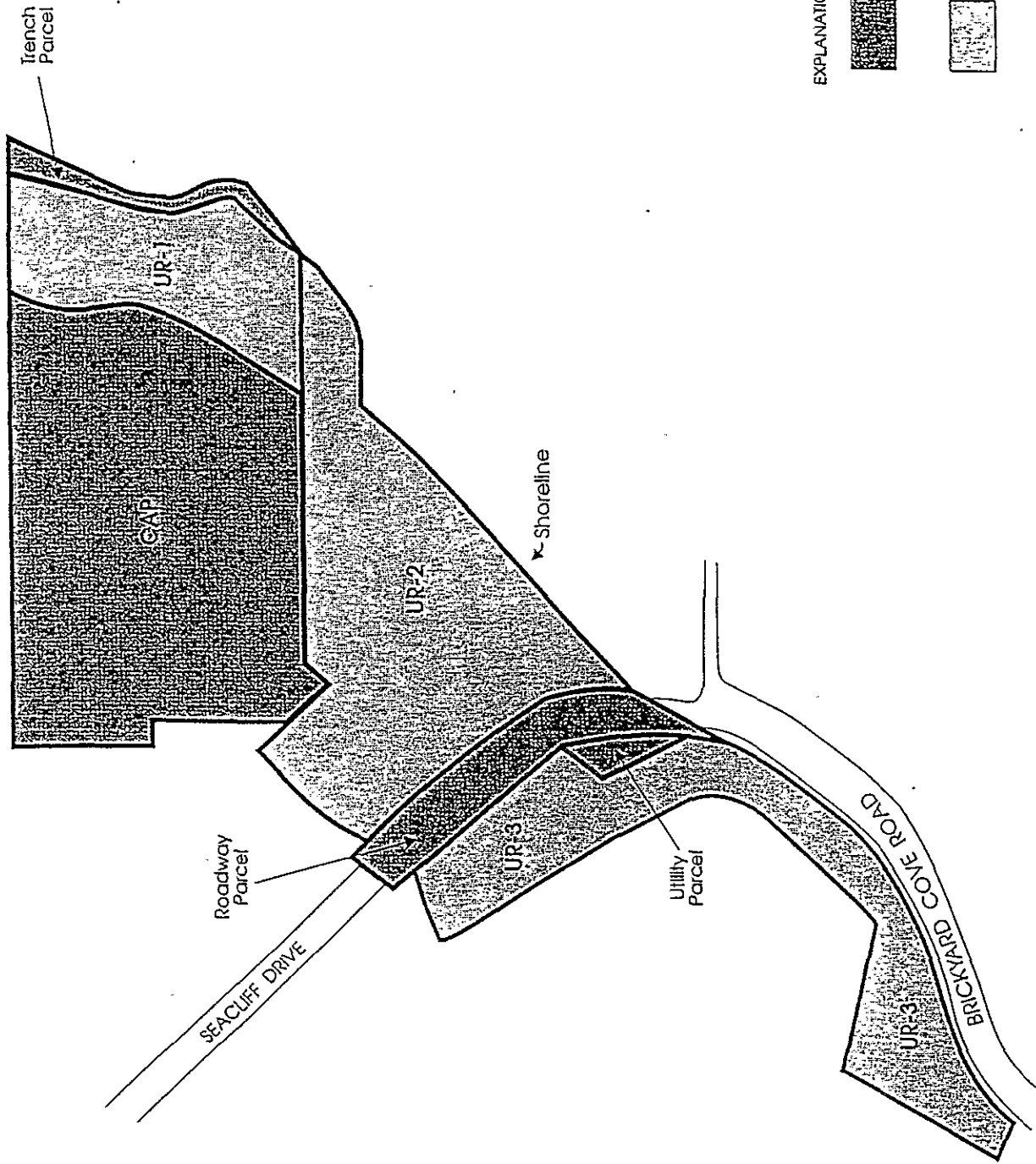
[Signature]



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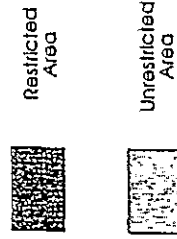
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EXHIBIT A



049237

EXPLANATION:



Scale: 1" = ± 225' December 1998



FUTURE LAND USE

Seaciff Marina

Figure 1

Project 2044

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December 8, 1998
Job No. 81129

CONTAINMENT CAP PARCEL
EXHIBIT "A"

All that certain real property situate in the City of Richmond, County of Contra Costa, State of California, described as follows:

BEGINNING at the most easterly corner of Parcel "C", as said parcel is shown on the Parcel Map of Subdivision MS 761-89, filed February 1, 1990, in Book 144 of Parcel Maps at Page 46, Contra Costa County Records;

THENCE leaving said Point of Beginning along a curve to the left, having a radius of 141.06 feet, whose center bears South 49°11'00" East, through a central angle of 38°44'00" for an arc length of 95.36 feet;

THENCE tangent to the last curve South 2°05'00" West, 234 feet;

THENCE along a tangent curve to the left, having a radius of 200.00 feet, through a central angle of 46°55'00" for an arc length of 163.77 feet;

THENCE tangent to the last curve South 44°50'00" East, 111.00 feet;

THENCE South 65°45'00" East, 68.00 feet;

THENCE along a tangent curve to the left, having a radius of 140.00 feet, through a central angle of 27°30'00" for an arc length of 67.20 feet to a point of compound curvature;

THENCE along a tangent curve to the left, having a radius of 93.00 feet, through a central angle of 85°45'00" for an arc length of 139.19 feet;

THENCE tangent to the last curve North 1°00'00" East, 520.48 feet to a point on the southerly line of Parcel "B", as said parcel is shown on said Parcel Map (144 PM 46);

THENCE along said southerly line North 88°51'17" West, 161.28 feet;

THENCE South 1°08'43" West, 30.00 feet;

THENCE North 88°51'17" West, 156.00 feet to the Point of Beginning.

Containing an area of 190,586 square feet, more or less.

